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**From:** Creswell, Michael [Creswell.Michael@epa.gov]  
**Sent:** 12/8/2020 8:01:20 PM  
**To:** Hicks, Matt [Hicks.Matthew@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]  
**Subject:** RE: finally done with RTC 8 and 8b

Works for me.

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**From:** Hicks, Matt <Hicks.Matthew@epa.gov>  
**Sent:** Tuesday, December 8, 2020 2:26 PM  
**To:** McGill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>  
**Subject:** RE: finally done with RTC 8 and 8b

See my edits below in red.

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**From:** McGill, Thomas <Mcgill.Thomas@epa.gov>  
**Sent:** Tuesday, December 8, 2020 11:31 AM  
**To:** Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>  
**Subject:** finally done with RTC 8 and 8b

I consolidated RTC 8 and 8b within the RTC file, and suggest re-labeling the heading more broadly ("PROTECTION OF HISTORIC AND CULTURAL RESOURCES" instead of NHPA), with subheadings that include "NHPA Section 106 Consultation" and "Operating Agreement between FDEP and the Florida SHPO". Below is my proposed language, copied into the email. Tom

## **PROTECTION OF HISTORIC AND CULTURAL RESOURCES**

### **NHPA Section 106 Consultation**

One commenter agreed with EPA's determination that approval or disapproval of the State's 404 Program assumption application is a Federal Undertaking triggering a Programmatic Section 106 consultation under the NHPA.

A commenter expressed appreciation to EPA for consulting with the Seminole Tribe pursuant to Section 106 on the development of a Programmatic Agreement (PA) for an assumed 404 Program.

### **EPA RESPONSE:**

# **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

## Operating Agreement between FDEP and the Florida State Historic Preservation Officer

One commenter described an agreement between the FDEP and the Florida SHPO, which will ensure protection of historic and cultural resources through a consultation process called “historic properties review.” The commenter explained that the review assesses the potential effects that a state Section 404 program permit application may have on historic properties and ways to avoid, minimize, or mitigate adverse effects. The review includes consultation with tribes, local governments, applicants, and the public and complements established procedures for permit processing and public notice under the state Section 404 program.

A commenter expressed concern that the Operating Agreement does not currently reflect coordination with the ACHP and recommends a PA be developed to clearly set forth in what circumstances EPA will involve the ACHP. The commenter requested that the Seminole Tribe of Florida be a signatory to any Programmatic AgreementPA and that it be available to the Tribe for review before EPA decides on Florida’s application to implement its own Section 404 Program.

A commenter provided specific comments and questions on the Operating Agreement, requesting clarification on when, how, and who the state plans to consult with respect to Tribal consultation. The questions centered on how the state consultation will differ from Federal consultation, who will be consulted, and specific questions about the language used in the proposed Operating Agreement.

## EPA RESPONSE:

# Ex. 5 Deliberative Process (DP)

# **Ex. 5 Deliberative Process (DP)**